as being for public purposes, and as within the general constitutional provisions as to education.[21] The benefits of this particular act are then held to be validly restricted to veterans. And this benefit, so conferred on them alone, is not regarded as violative of Article IV, section 32, of the California Constitution, forbidding extra compensation to servants, public officers and contractors.

On this point there is a dissenting opinion, which also regards the various allowances as amounting to gifts within the prohibitions of section 31 of the same Article. On both points however, the reasoning of the majority opinion seems preferable. The mere fact that educational aid is extended in cash allowance form does not make it into a gift,[22] public purposes being served through the benefit received by the State from the extension of education in a direction in which such benefit may reasonably be expected to arise.[23] Nor do "services" of the sort rendered by soldiers and sailors seem to be within the contemplated scope of section 32. This section is properly applicable to concrete acts performed consciously for the State as a political organism, rather than to the complex group of motives and objects of solicitude involved in the notion of "patriotic service."

In California, then, the veteran ready to farm, or to learn, may obtain State assistance toward either. Both forms of aid involve constructive social activity, and some predictable social benefit. Hence the stringent prohibitions which barred the flat cash bonus have served their purpose, in that, although they have not precluded some expression of State gratitude for patriotic service, inadequate though it may be, they have forced such expression into productive channels.

R. R. L.

DEDICATION BY ESTOPPEL: BONA FIDE PURCHASER OF DEDICATED LAND—*Phillips v. Laguna Beach Company, et al.*,[1] brings out the fact that some confusion of language and thought is to be found in the much-litigated questions concerning dedication of land in California. The defendant corporation had repeatedly and for many years, through its officers and agents, represented the lands in question as having been dedicated for public park purposes. The plaintiff had purchased neighboring land relying on such dedication. This was followed by the "placing of pavilions, drinking fountains, a tennis court and permitting the public to use the property at will".[2] Thereafter, the defendant corporation attempted to repudiate the arrangements as to dedication; and,

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[21] California Constitution, Art. IX, § 1.

[22] See also MacMillan v. Clarke (1920) 184 Cal. 491, 194 Pac. 1030, and comment thereon in 9 California Law Review, 431.

[23] Carman v. Hickman County (1919) 215 S. W. (Ky.) 408.

[1] (January 21, 1922) 37 Cal. App. Dec. 296. Rehearing granted in the Supreme Court, March 20, 1922.

[2] Supra, n. 1, p. 298.

as security for a loan from the defendant college, granted the land in question under a deed of trust to trustees for the college. Plaintiff now claims that the land has been dedicated, and that the corporation could not revoke the dedication, nor the college order a sale of the land. The court refuses to enjoin the college from ordering a sale to satisfy its lien on the land and holds that though the defendant corporation is estopped to deny that it has completed a dedication, such estoppel does not extend from the dedicator to his grantee for value and without notice. The instant case thus presents at least two interesting points: 1. It follows the oft-repeated statement that a dedication operates against the dedicator by estoppel.[3] 2. It protects a bona fide purchaser for value and without notice of the dedicated land.

The view that dedication operates against the dedicator by estoppel has been strongly opposed on scientific grounds.[4] The doctrine of dedication was recognized as early as the eleventh century, while equitable estoppel, or estoppel in pais, did not receive recognition in the law courts until the nineteenth century.[5] Dedication is comprehensible entirely apart from estoppel and is more nearly like a grant.[6] The technical requirements of an estoppel need not exist to make a dedication. "The public may not have expended a dime, it may be perfectly well accomodated by another road running between the same termini, and yet, if there be proof of an appropriation, there is a highway. . . . This idea of an *estoppel in pais,* therefore, which occupies so prominent a place in a few American decisions, though it may furnish analogies for the guidance of the Court and jury in presuming an intention to dedicate, is foreign to the principle on which dedication rests, and does but form an excrescence to mar the simplicity of the doctrine as established by English authority."[7] For practical purposes, however, except in cases involving oral dedication and the recording acts, the estoppel in pais view has the same effect as the traditional idea of dedication operating in the nature of a grant.[8]

Though many California cases hold that where a dedication has been accepted, it is irrevocable,[9] there is no statement in any of these decisions to the effect that dedication is binding on a

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[3] Smith v. City of San Luis Obispo (1892) 95 Cal. 463, 34 Pac. 591; Schmitt v. San Francisco (1893) 100 Cal. 302, 34 Pac. 961: "Dedication is but a phase of estoppel." Prescott v. Edwards (1897) 117 Cal. 298, 303, 49 Pac. 178, 59 Am. St. Rep. 186; People v. Laugenour (1914) 25 Cal. App. 44, 142 Pac. 888; 18 C. J. 111, § 129; 8 R. C. L. 906, § 31.

[4] Angell on Highways (2nd ed.), pp. 172, 173; 13 Cyc. 438, 439; 2 Tiffany, Real Property (2nd ed.) 1881, §484 and authorities there cited.

[5] 2 Tiffany, Real Property (2nd ed.) 1881, §484.

[6] Supra, n. 4.

[7] Angell on Highways (2nd ed.) p. 174.

[8] Supra, n. 5.

[9] Breed v. Cunningham (1852) 2 Cal. 361; Rice v. Boyd (1883) 2 Cal. Unrep. 196; Brown v. Stark (1890) 83 Cal. 636, 24 Pac. 162; Logan v. Rose (1891) 88 Cal. 263, 26 Pac. 106; Archer v. Salinas City (1892) 93 Cal. 43, 28 Pac. 839, 16 L. R. A. 145.

bona fide purchaser for value and without notice. The instant case[10] appears to be the first California decision holding that dedication is not binding on the innocent grantee of the dedicator. There are several cases elsewhere in accord.[11] This view is logical whether considered under the doctrine that dedication operates as an estoppel in pais or on the basis that it operates more like a grant. An estoppel does not extend to the innocent grantee of the party who was estopped.[12] Ordinarily, however, in the case of highways or parks, the public user is so notorious or there is such recordation as clearly to give a grantee constructive notice of dedication.[13] But where, as in the principle case,[14] the public user is consistent with private ownership, it may be found that there is no constructive notice to the grantee.[15] An interesting question arises in this connection when dedication is considered from the traditional view that it operates on the analogy of a grant rather than as an estoppel in pais. Under sections 1213 to 1215 of the Civil Code the bona fide purchaser for value and without notice of land which has been previously conveyed for dedication but not so recorded would seem clearly to be protected.[16] A conveyance, however, is defined as an instrument in writing,[17] and dedication may be consummated merely by an oral offer with public user as acceptance.[18] In this latter case, it would seem that

[10] Supra, n. 1.

[11] Schuchman v. Borough of Homestead (1885) 111 Pa. 48, 55, 2 Atl. 407; "The same general principle of equity that raises the estoppel will protect him as an innocent purchaser from its operation, and this is but just and right." Green v. Miller (1912) 161 N. C. 30, 76 S. E. 507, 44 L. R. A. (N. S.) 231; Sexton v. Corporation of Elizabeth City (1915) 169 N. C. 385, 86 S. E. 344.

[12] Snodgrass v. Ricketts (1859) 13 Cal. 360; Roper v. Smith (1919) 31 Cal. App. Dec. 37, 187 Pac. 454; 10 R. C. L. 837, §141; Ewart on Estoppel, p. 210.

[13] Rice v. Boyd, supra, n. 9; Brown v. Stark, supra, n. 9; Bellar v. Beaumont (Tex. Civ. App. 1900) 55 S. W. 410; Nicholas v. Title & Trust Co. (1916) 79 Ore. 226, 154 Pac. 391, Ann. Cas. 1917A 1149; Horton v. Okanogan County (1917) 98 Wash. 626, 168 Pac. 479; 13 Cyc. 492.

[14] Supra, n. 1, p. 299.

[15] But cf. Nicholas v. Title & Trust Co., supra, n. 13 (from the presence of white stakes on the land" . . . the defendant could have obtained such knowledge of the original survey as to induce an inquiry as to the source, nature, and extent of the easements; and, this being so, notice of the survey as thus marked upon the ground must be implied and imputed to the defendant").

[16] Cal. Civ. Code, § 1214: "Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded. . . . "

[17] Cal. Civ. Code, § 1215: "The term 'conveyance' . . . embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to any real property may be affected, except wills."

[18] Harding v. Jasper (1860) 14 Cal. 643; San Francisco v. Canavan (1872) 42 Cal. 541; Wheeler v. City of Oakland (1917) 25 Cal. App. Dec. 1072, 170 Pac. 864; Elliott v. McIntosh (1919) 41 Cal. App. 763, 183 Pac. 692; Inyo County v. Given (1920) 60 Cal. Dec. 131, 191 Pac. 688.

the bona fide purchaser of the dedicated land is no more protected than is the bona fide purchaser of land which has been acquired by a third party through adverse possession.[19] In neither case is there any instrument to be recorded. Nevertheless, in spite of this logical difficulty, in a decision under a statute similar to that in California there is language which might be taken to construe the recording acts as extending to cover all instances of dedication.[20] There was in this case, however, a written dedication. In any event, on principle it seems desirable that the recording acts be extended by statute to require some formal recordation in order to make acquisition of title either by adverse possession or by dedication binding on a bona fide purchaser for value and without notice.

C. C. H.

PLEADING: JUDGMENTS — MOTION TO OFFSET AN OUTLAWED JUDGMENT UNDER SECTION 685, CODE CIVIL PROCEDURE, AGAINST A SUBSISTING JUDGMENT—The case of *Murphy v. Davids*[1] presents an interesting and ingenious attempt to offset an outlawed judgment against a subsisting judgment. The plaintiff, in the Superior Court of Los Angeles County, recovered a $15,000 judgment against the defendant. The defendant thereafter, encouraged by section 685 of the California Code of Civil Procedure,[2] purchased several outlawed but otherwise valid judgments rendered against the plaintiff by the Superior Court of San Francisco County, and amounting in the aggregate to $11,000. After complying with the procedure required by section 685 the defendant obtained an order from the San Francisco court for execution to issue on the outlawed judgments. He then moved, in the Los Angeles court, to

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[19] 2 Tiffany, Real Property (2d ed.) 1986, §511. Yet is must be remembered that acquisition of title by adverse possession is distinguishable from acquisition of title by dedication because by adverse possession the former title is not transfered, but the wrongful possessor acquires an entirely new title. 2 Tiffany, Real Property (2d ed.) 1980, §511.

[20] Sexton v. Corporation of Elizabeth City, supra, n. 11: "Besides, as they had no actual notice, our statute, which requires the registration of deeds as bona fide purchasers for value, in order to pass the title (Revisal, §980 [Acts 1885, c. 147]), protects them against the application of the ordinary doctrine of estoppel relating to such cases."

[1] (Nov. 29, 1921) 36 Cal. App. Dec. 838, 203 Pac. 802.

[2] The pertinent part of this section is as follows: "In all cases the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court upon motion, or by judgment for the purpose founded upon supplementary pleadings . . . . "; this section is held constitutional though requiring no notice of the motion; Harrier v. Bassford (1905) 145 Cal. 529, 78 Pac. 1038. It is purely discretionary with the court to grant the motion or not; Wheeler v. Eldred (1902) 137 Cal. 37, 69 Pac. 619; as to what the court should consider on hearing the motion see Adjustment Co. v. Newman (1921) 61 Cal. Dec. 486, 197 Pac. 334. For similar statutory provisions in other states see Parsons Code Civ. Proc. (N. Y.), § 1377; Idaho Comp. Stats. 1919, § 6914; Ind. Burns Ann. Stats. 1914, § 717.